the employer's contention that terminal bargaining units are inappropriate for purposes of collective bargaining.

The circuit court's brief *per curiam* opinion noted:

> "The Board entered its order directing Groendyke to bargain with the union in those terminals where the Union had won the elections. The Board charges Groendyke with violating §§8(a)(5) and (1) of the National Labor Relations Act and seeks enforcement of its order. Groendyke urges that the Board's decision and order sanction piecemeal unionism which, it insists, is not only unauthorized but is contrary to the purpose and spirit of the Act. Groendyke raises the same question before the Tenth Circuit in *National Labor Relations Board v. Groendyke Transport, Inc.*, 10th Cir. 1969, 417 F. 2d 33, cert. den. 397 U.S. 935, ... S.Ct. ....., 25 L. Ed. 2d 116. Groendyke urges that the factual differences bewteen the Tenth Circuit case and this case are such as require a different disposition here than was made in the cited case. Factual differences are present but are not such as to require a different result. We are in agreement with the Board's conclusion that the terminals are appropriate bargaining units.
>
> Other less significant issues are raised by Groendyke, none of which requires the overturning of the Board's decision. Its findings are supported by substantial evidence on the record as a whole. Its conclusions are declaratory of the applicable legal principles.
>
> The order of the Board will be ENFORCED."

REASON FOR DENIAL OF CERTIORARI

1.

Petitioner attempts to present fact issues for determination here. Fact determinations are for NLRB in the first instance, with review by the circuit court as to whether the findings of fact are based upon substantial evidence. *Heinz Co. v. NLRB,* 311 U.S. 514; *NLRB v. Pittsburg S.S. Co.,* 340 U.S. 498; *NLRB v. Walton,* 369 U.S. 404. Accordingly, petitioner's attempt to present evidentiary issues to the Supreme Court will not do.

2.

The same issue has been tendered by the same employer and certiorari has recently been denied. *Groendyke Transport, Inc. v. NLRB,* 397 U.S. 935 (1970), denying review of the Tenth Circuit's decision at 417 F. 2d 33, enforcing 164 NLRB 231 (1967).

3.

It is the Board's, not the Court's function to determine appropriate bargaining units. *Packard Motor Car Co. v. NLRB,* 320 U.S. 486, 491; *Southern S.S. Co. v. NLRB,* 316 U.S. 311; *Pittsburgh Plate Glass v. NLRB,* 313 U.S. 146.

4.

This petition for certiorari is frivolous — its obvious purpose is to delay further the bargaining which the statute requires. The initial proceed-

ings for NLRB election herein were begun in June, 1967. Four years of immunity from bargaining is enough!

WHEREFORE, respondent prays that certiorari be denied.

Respectfully submitted,

L. N. D. WELLS, JR.

1601 National Bankers Life Bldg.
Dallas, Texas 75201

Attorney for Southern Conference of Teamsters